

# **EXHIBIT 5**

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

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WAYNE BERRY, a Hawaii Citizen,

Plaintiff,

V.

HAWAIIAN EXPRESS SERVICE, INC.;  
FLEMING COMPANIES, INC., et al.,

Defendants.

**SECOND  
AMENDED JUDGMENT  
IN A CIVIL CASE**

CIVIL 03-00385SOM-LEK

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

March 16, 2006

At 4 o'clock and 00 min p.m.  
SUE BEITIA, CLERK

A Stipulation Regarding Good Faith Settlement between Plaintiff Wayne Berry and Defendants Hawaiian Express Service, Inc., H.E.S. Transportation Services, Inc., California Pacific Consolidators, Inc., Jeffery P. Graham, Peter Schaul, and Patrick Hirayama, (collectively "HEX Defendants") having been approved and ordered and filed on July 7, 2005, and a "Stipulation for Dismissal of the HEX Defendants with Prejudice and Order" having been approved and ordered and filed on July 25, 2005, and this Action having come for hearing before the Court whereby the issues have been heard and decisions have been rendered; and this Action having come for a trial by jury before the Court whereby the issues have been tried and decision has been entered; the Clerk of Court enters an AMENDED JUDGMENT as follows:

IT IS ORDERED AND ADJUDGED that pursuant to the "ORDER GRANTING DEFENDANT FOODLAND'S MOTION FOR SUMMARY JUDGMENT; GRANTING DEFENDANT HAWAII TRANSFER COMPANY'S MOTION FOR SUMMARY JUDGMENT; AND GRANTING IN PART, DENYING IN PART DEFENDANTS DILLON, NOA, AND CHRISTENSEN'S MOTION FOR SUMMARY JUDGMENT" filed on January 26, 2005:

March 16, 2006

CIVIL 03-00385SOM-LEK

Wayne Berry, etc vs. Hawaiian Express Service, Inc., *et al.*

SECOND AMENDED JUDGMENT IN A CIVIL CASE

page 2 of 4

- SUMMARY JUDGMENT as to Counts I, II, III, and VI of the Second Amended Verified Complaint is GRANTED in favor of defendant Foodland Super Market, Limited; in favor of defendant Hawaii Transfer Company, Limited, and against plaintiff Wayne Berry. As to Count 5 of the Second Amended Verified Complaint, the Court dismisses all claims under the Sherman Act against defendant Foodland Super Market, Limited and against defendant Hawaii Transfer Company, Limited, pursuant to FRCP Rule 12(b)(6); and,
- SUMMARY JUDGMENT with respect to Defendants Mark Dillon, Brian Christiansen, and Teresa Noa [collectively, "Employee Defendants"] is DENIED in Part and GRANTED in Part, as pursuant to the aforementioned January 26, 2005 Order, wherein "*...The Court denies summary judgment to [defendant Mark] Dillon and [defendant Teresa] Noa with respect to Count I for acts occurring between the dates of March 7, 2003, and June 9, 2003, but grants summary judgment to [defendant Brian] Christiansen with respect to Count I for that time period. The court grants summary judgment to all Employee Defendants with respect to Count I for acts occurring outside the period from March 7, 2003, to June 9, 2003. The court grants summary judgment to Employee defendants on Counts II, III, and IV, and dismisses Count V with respect to Employee Defendants...*".

IT IS FURTHER ORDERED that SUMMARY JUDGMENT IS GRANTED in favor of defendant AlixPartners and against plaintiff Wayne Berry, and is granted as pursuant to the "ORDER DENYING BERRY'S MOTION FOR SUMMARY JUDGMENT AGAINST ALIXPARTNERS; ORDER GRANTING ALIXPARTNERS' COUNTERMOTION FOR SUMMARY JUDGMENT" filed on June 17, 2005.

March 16, 2006  
CIVIL 03-00385SOM-LEK  
Wayne Berry, etc vs. Hawaiian Express Service, Inc., *et al.*  
SECOND AMENDED JUDGMENT IN A CIVIL CASE  
page 3 of 4

IT IS FURTHER ORDERED that: (1) Plaintiff Wayne Berry's Motion for Summary Judgment is Granted in Part and Denied in Part ; (2) Defendant Post Confirmation Trust-- *as the representative of defendant Fleming Companies, Inc. during Fleming Companies, Inc.'s bankruptcy*--Counter-Motion for Summary Judgment is Granted in Part and Denied in Part ; (3) Defendants C&S Logistics of Hawaii, LLC, C&S Wholesale Grocers, Inc.; C&S Acquisitions, LLC, ES3, LLC, and Richard Cohen's Counter-Motion for Summary Judgment are GRANTED; (4) Defendants Mark Dillon, Teresa Noa, Melvin Ponce, Sonia Purdy, Justin Fukumoto, Alfreda Waiolama, and Jacqueline Rio's Counter-Motion for Summary Judgment is GRANTED in Part and DENIED in Part; and (5) Defendants Guidance Software, Inc., and Michael Gurzi's Counter-Motion for Summary Judgment is GRANTED.<sup>1</sup>

Said Motions are adjudicated as pursuant to the "ORDER GRANTING IN PART, DENYING IN PART BERRY'S MOTION FOR SUMMARY JUDGMENT; ORDER GRANTING C&S LOGISTICS OF HAWAII, LLC, C&S WHOLESALE GROCERS, INC., C&S ACQUISITION, LLC, ES3, LLC, AND RICHARD COHEN'S MOTION FOR SUMMARY JUDGMENT; ORDER GRANTING GUIDANCE SOFTWARE, INC., AND MICHAEL GURZI'S MOTION FOR SUMMARY JUDGMENT; ORDER GRANTING IN PART, DENYING IN PART REMAINING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT" filed on June 27, 2005.

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<sup>1</sup> The "Amended Judgment" incorrectly reflected defendants Guidance Software, Inc. and Michael Gurzi's Counter-Motion as having been Granted in Part and Denied in Part.

March 16, 2006

CIVIL 03-00385SOM-LEK

Wayne Berry, etc vs. Hawaiian Express Service, Inc., *et al.*

SECOND AMENDED JUDGMENT IN A CIVIL CASE


page 4 of 4

AS TO THE ISSUES THAT HAVE BEEN TRIED BEFORE THE COURT AND  
THE DECISION THAT HAS BEEN RENDERED BY THE JURY:

IT IS ORDERED AND ADJUDGED THAT JUDGMENT is entered in favor of  
the Plaintiff in the amount of \$57,534.00, and against the defendant(s) Fleming in  
the amount of \$57,530.00; Mark Dillon in the amount of \$2.00; and Teresa Noa in  
the amount of \$2.00, and furthermore, is entered as pursuant to the "SPECIAL  
VERDICT FORM" filed on March 7, 2006.

cc: All Counsel and/or Parties of Record

March 16, 2006  
\_\_\_\_\_  
Date

SUE BEITIA  
\_\_\_\_\_  
Clerk  
  
\_\_\_\_\_  
(By) Deputy Clerk